

Title XX, Chapter X, Independent Contractor Database Act

The following is a discussion draft of a possible legislative proposal. It is intended only for purposes of the Business and Labor Interim Committee's November 14, 2007 meeting. For additional information, contact the Office of Legislative Research and General Counsel.

Part 1. General Provisions

Section XX-X-101. Title

This chapter is known as the "Independent Contractor Database Act."

Section XX-X-102. Definitions

For purposes of this chapter

Section XX-X-103. Pilot program

Chapter 12 is repealed June 30, 2012, unless extended by the Legislature.

Require the Independent Contractor Enforcement Council and the Attorney General to report to the Business and Labor Interim Committee by no later than November of 2008, 2009, 2011 as to:

- the design and implementation of the database, including the need if any, for legislative changes
- findings regarding the nature and extent of the misclassification of workers as independent contractors
- the results of regulatory and enforcement activities related to the database
- recommended statutory changes to:
 - Reduce the costs resulting from the misclassification of workers as independent contractors
 - Extend outreach and education efforts regarding the nature and requirements of independent contractor status
 - Clarify the law so that the determination of independent contractor status by the executive branch agencies is uniform or consistent
 - Promote efficient and effective information sharing amongst executive branch agencies.

Part 2. Independent Contractor Enforcement Council

Section XX-X-201. Creation

Create council as follows:

- members are the chief administrative officer or designee of:
 - Labor Commission
 - Department of Commerce
 - Department of Public Safety
 - Department of Workforce Services
 - State Tax Commission
- a chief administrative officer of one of the agencies would be designated as chair
- the agency overseen by the chair of the council would staff the council

Section XX-X-202. Duties and powers

Duties of the council could include:

- directing the design of a database described in Part 3 for full-implementation by July 1, 2009
- developing one or more requests for proposals to the extent necessary to design and implement the database
- reporting related to the database, enforcement of "independent contractor" laws, and prosecution of identity theft
- beginning July 1, 2009, meet quarterly with the Attorney General or the Attorney General's designee
 - to review the most recent results from the database
 - to coordinate regulatory and law enforcement efforts

Powers of the council could include:

- meeting as called by the chair
- sharing information amongst the agencies represented on the council and the Attorney General that is not part of the database, but is allowed to be shared by law

Part 3. Independent Contractor Database

Section XX-X-301. Creation

- A designated agency would oversee: the database, any contracts with private parties related to the database, and the collection of data from the agencies represented on the council by the sooner of when the council determines the database can be implemented and July 1, 2009
- Database required to identify when a person holds that person out as an independent contractor or engages in the performance of work as an independent contractor not subject to the routine rule or control of an employer
- Database required to include monthly cross-checks of the information that:
 - Identifies workers who are misclassified as independent contractors
 - Promotes employer compliance with state and federal laws for:
 - Withholding taxes and making payments for Social Security, Medicare, and unemployment insurance
 - Providing the proper level of workers' compensation insurance
 - Preventing insurance fraud
 - Paying overtime and minimum wages
 - Including workers in employee benefit programs; and
 - Reduces employer intentional misclassification of workers as independent contractors as a strategy to gain an unfair competitive advantage in the marketplace
 - Isolates and identifies cases of worker identity theft.

Section XX-X-302. Confidentiality of information on the database

- Address agencies accessing the database and down stream disclosure of confidential information

Additional Issues to Consider:

- Should the subject of the data in the database be informed of inconsistencies in order to correct those issues?
If so, by whom and how?
- Should a common identified used by all agencies on the council be developed?
- How should the costs attributable to the design and implementation of the database be funded? Should costs of enforcement related to information obtained from the database also be funded?